



Who May Adopt

- ✓ Any adult who is 15 years older than the adoptee OR who is 25 years of age OR who is adopting a step child (Idaho Code §16-1502).
- ✓ Must have resided in Idaho for prior 6 months (Idaho Code §16-1506).

Petition for Adoption

- ✓ Petition for adoption must be filed by person or persons proposing to adopt. Idaho Code § 16-1506
- ✓ Petition must be filed with the court having jurisdiction over the CPA case unless that court relinquishes jurisdiction.
- ✓ Petition must contain:
 - ◆ The names and addresses of the petitioners
 - ◆ An allegation that the petitioners have resided in the state for six consecutive months preceding the adoption
 - ◆ The name of the child
 - ◆ The name by which the child will be known by if adopted
 - ◆ The relationship of the child to the petitioner, if any
 - ◆ The names of any person or agency whose consent is necessary
 - ◆ An allegation that the interests of the child will be promoted by the adoption (Idaho Code § 16-1507)

Consent to Adoption

Consent to adoption is required from:

- ✓ Child, if he or she is over 12 years of age;
- ✓ Mother of the child;
- ✓ Any man
 - ◆ who is currently married to the mother or who was married to the mother at the time the child was born;
 - ◆ who has been adjudicated the father of the child prior to the execution of a consent to termination by the mother;
 - ◆ is recorded on the birth certificate as the child's father with the knowledge and consent of the mother;
 - ◆ has filed a voluntary acknowledgment of paternity pursuant to Idaho Code § 7-1106;
 - ◆ has developed a substantial relationship with the child who is more than 6 months old and has taken responsibility for the child's future and financial support pursuant to Idaho Code § 16-1504(2)(a); or
 - ◆ has developed a substantial relationship with a child under the age of 6 months and has commenced paternity proceedings and complied with Idaho Code § 16-1504(b);
- ✓ Legally appointed guardian of the person of the child or custodian of the child;
- ✓ Guardian *ad litem* for the child or for any other party; and
- ✓ Spouse of the adopting person.

January 24, 2007





Adoption

Consent to Termination of Parental Rights and Adoption

Idaho Code § 16-1504

- ✓ Consult special provisions of ICWA if the child is an Indian child (*See* ICWA Benchcard & Chapter XI of CP Manual).
- ✓ Indigent parties are entitled to appointment of counsel prior to signing a consent to terminate parental rights.
- ✓ Consent to terminate parental rights pursuant to Idaho Code § 16-2005 must:
 - ◆ be executed using the statutory form prescribed in Idaho Code § 16-2005(4);
 - ◆ be knowing and voluntary;
 - ◆ be witnessed by a district judge, magistrate judge, or comparable judicial officer of another state; and
 - ◆ if executed in another state, must be the result of a proceeding similar to Idaho's OR be authorized under the laws of that state.
- ✓ Unless the consent is filed by a licensed adoption agency or in conjunction with a petition for adoption the court must hold a hearing.
- ✓ Where the parent whose rights are being terminated is a minor, his/her parents (the grandparents of the child) must sign the consent.

Best Practice Recommendations:

To evaluate whether a consent is knowing and voluntary, make the following inquiry:

- ✓ State in your own words why we are here today? Can you read, write, and understand English? What was the last grade you finished in school? Have you read the Consent to Terminate your parental rights? Do you understand it? If not, what do you not understand about the document?
- ✓ If you sign this document do you understand that your child will be put up for adoption? You may not know when or how? You may never know where or with whom your child will be placed? The law will treat you and your child as strangers – as if you were never related to each other? You will give up all rights to inheritance? You will have not legal rights or responsibilities for your child from this day forward?
- ✓ Have you talked to people you trust regarding your decision to terminate your parental rights? Who (parents, family, friends, or caseworker)? Do they support your decision? How long have you thought about your decision? Have you had enough time to make this decision? Is the decision your own personal decision? Has anyone made promises or threats to you to gain your agreement? Have you received money for this decision?
- ✓ Are you under the influence of any medication, drugs, or alcohol at this time? If so, does it have any impact on your ability to make a decision?
- ✓ Are you willing to sign this consent? Do you understand that the consent is a final decision and that once signed, you cannot change your mind? Do you believe your decision is in the best interest of your child and yourself? Why? If you are consenting for financial reasons do you understand that there are funds available from the state to assist you in raising your child?

Who is Entitled to Notice of Adoption

Idaho Code § 16-1506(3)

- ✓ Any person whose consent is required;
- ✓ Any person married to the child's mother at the time she executes her consent to adoption or relinquishes the child for adoption;
- ✓ Any person who has registered "notice of commencement of a paternity action" (regardless of whether they have actually commenced a paternity action or complied with any of the other requirements imposed by the consent provision of the Idaho Adoption statute);
- ✓ Any person who is recorded as the father on the birth certificate with the knowledge and consent of the child's mother;
- ✓ Any person openly living in the same household with the child and who holds himself out to be the father;
- ✓ IDHW is entitled to service of the Petition in all cases involving adoption by third parties and in cases involving stepparent and grandparent adoption when the court orders an investigation. This service of the petition differs from the notice required. Notice might not include the petition itself (as when the names of the birth mother or the potential adoptive parents are not disclosed to the person receiving notice). Idaho Code § 16-1506(3).

Content of Notice

Idaho Code § 16-1505(3)-(8)

- ✓ The notice need not disclose the name of the mother of the child.
- ✓ The notice need not contain the names of the petitioners.
- ✓ The notice must state that the person served must respond within 20 days if they intend to intervene or contest the adoption. If they do not respond, they lose any right to further notice.

Timing, Form & Purpose of Notice

- ✓ Notice may be served immediately after the commencement of the proceeding and must be served at least 20 days before the final "dispositional hearing."
- ✓ Form of notice
 - ◆ If the person's consent is necessary for the adoption, they are entitled to personal service of the notice or, if they cannot be served after reasonable efforts are made, notice may be by certified or registered mail AND publication once a week for three weeks in the most relevant newspaper as determined by the court;
 - ◆ If the person is entitled to notice but his or her consent to the adoption is not required, notice may be by certified mail, return receipt requested, or, if ineffective after two attempts, notice may be by publication, posting, or any other manner of service;
 - ◆ A man who has filed a notice of intent to commence paternity proceedings is entitled to notice by certified mail.
- ✓ Proof of notice on all required persons must be filed with the court before the final dispositional hearing;
- ✓ The sole purpose of the notice is to enable the person receiving notice to provide evidence regarding the best interest of the child. Idaho Code § 16-1505(9).





Adoption

Social Investigation

- ✓ A social investigation of the potential adoptive family and all its members must be conducted prior to the placement for adoption. If the adoption is a stepparent or grandparent adoption, the social investigation is only required if ordered by the court. Idaho Code § 16-1506(3).
- ✓ In exigent circumstances the court may permit a child to be placed with adoptive parent prior to the completion of the social investigation. In such circumstances, the investigation must be initiated within 5 days and completed within 60 days of the placement.
- ✓ In order for the adoption to go forward, there must be a positive recommendation from the investigator.
- ✓ If the social investigation is not conducted by the department, it must nonetheless be submitted to the department for oversight purposes.
- ✓ The petition for adoption must be served on the department in all cases involving adoption by third parties and, in cases involving stepparent and grandparent adoption, when the court orders an investigation. This service of the petition differs from the notice requirement. Notice might not include the petition itself (as when the names of the birth mother or the potential adoptive parents are not disclosed to the person receiving notice).
- ✓ The social investigation shall include reasonably-known medical and genetic information regarding both birth parents and sources of such information as well as reasonable known or available providers of medical care to the natural parents. This information must be made available to the potential adoptive family prior to the entry of an order for adoption.

Hearing

- ✓ The court must conduct a hearing in which it examines all persons appearing before it and any social investigation that is required.
- ✓ The person(s) adopting the child, the child and the spouse of the petitioner (if he or she is a natural parent of the child) must appear at the hearing. Idaho Code § 16-1506(1).
- ✓ The court must find that the interests of the child will be promoted by the adoption. If found, the court must order the adoption.

Best Practice Recommendations:

- ✓ Inform Parent of Voluntary Adoption Registry.

Adoption is discussed in the Idaho Child Protection Manual, available at <http://www.isc.idaho.gov/childapx.htm>